

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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VICTOR RODRIGUEZ,

Petitioner,

- against -

**ROBERT ERCOLE, Superintendent of
Greenhaven Correctional Facility,**

Respondent.
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GERSHON, United States District Judge:

Petitioner has filed objections to the Report and Recommendation ("R&R") of Magistrate Judge Roanne L. Mann dated August 2, 2010, which recommends denial of his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, on the grounds that it is untimely. Those objections have been carefully reviewed under the *de novo* standard of review. *See* Fed. R. Civ. P. 72(b) (3). The court concludes that the objections are without merit and adopts Judge Mann's R&R in its entirety. Judge Mann, with great care, and sensitivity to petitioner's claims of actual innocence, determined correctly that the petition is untimely and that petitioner has failed to present a sound basis for equitable tolling. Therefore, respondent's motion to dismiss the petition is granted; petitioner's motion to stay proceedings in this court to allow him to exhaust additional claims in state court is denied as moot; and the petition is dismissed.

SO ORDERED.

____s/NG_____
NINA GERSHON
United States District Judge

Dated: November 10, 2010
Brooklyn, New York

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
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